

This record is a partial extract of the original cable. The full text of the original cable is not available.

231523Z May 00

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ACTION AF-00

INFO	LOG-00	NP-00	AID-00	AMAD-01	ACQ-00	CIAE-00	SMEC-00
	DODE-00	DOEE-00	ANHR-00	SRPP-00	DS-00	EB-00	EUR-01
	UTED-00	VC-00	H-01	TEDE-00	INR-00	IO-00	LAB-01
	L-00	VCE-00	AC-01	NSAE-00	NSCE-00	OIC-02	OMB-01
	OPIC-01	PA-00	PM-00	PRS-00	ACE-00	P-00	SP-00
	IRM-00	STR-00	TRSE-00	USIE-00	PMB-00	DSCC-00	PRM-01
	DRL-02	G-00	NFAT-00	SAS-00	/012W		

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FM AMEMBASSY HARARE
TO SECSTATE WASHDC 6127
INFO AMEMBASSY GABORONE
AMEMBASSY LILONGWE
AMEMBASSY LUSAKA
AMEMBASSY MAPUTO
AMEMBASSY PRETORIA
AMEMBASSY WINDHOEK
AMEMBASSY LONDON
AMEMBASSY PARIS

UNCLAS HARARE 002763

SIPDIS

LONDON FOR PFLAUMER

PARIS FOR BISA WILLIAMS

E.O. 12958: N/A

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TAGS: PHUM PGOV PREL Z1

SUBJECT: THE SUPREME COURT STRIKES DOWN LOMA SECTIONS THAT
INTERFERE WITH FREE SPEECH

REF: HARARE 01174

1. ON MAY 22, THE ZIMBABWE SUPREME COURT RULED IN FAVOR OF THE INDEPENDENTLY OWNED "THE STANDARD NEWSPAPER" EDITOR, MARK CHAVUNDUKA, AND CHIEF REPORTER, RAY CHOTO, WHO CHALLENGED THE CONSTITUTIONALITY OF SECTION 50(2) OF THE LAW AND ORDER MAINTENANCE ACT (LOMA)(REFTEL). THE COURT FOUND THAT THE LOMA SECTION 50, WHICH MAKES IT A CRIME TO WRITE "FALSE STATEMENTS THAT ARE LIKELY TO CAUSE FEAR AND, ALARM AND DESPONDENCY AMONG THE PUBLIC" CONTRAVENED SECTION 20(1) OF THE CONSTITUTION, WHICH PROVIDES FOR FREEDOM OF EXPRESSION. THE SUPREME COURT DECISION WILL NOW RESULT IN ALL CHARGES AGAINST THE TWO JOURNALISTS UNDER THE LOMA BEING DROPPED IN THE MAGISTRATES COURT. THE TWO JOURNALISTS WERE CHARGED UNDER THE LOMA IN JANUARY 1999, AFTER PUBLISHING A STORY IN THE STANDARD REPORTING THAT THE GOVERNMENT HAD FOILED A "COUP" ATTEMPT. THEY WERE ARRESTED BY THE POLICE AND CREDIBLY ALLEGED THAT THEY WERE TORTURED BY THE MILITARY DURING THEIR DETENTION. THE NEWSMEN WERE OUT ON BAIL AND HAD FACED A SEVEN-YEAR JAIL SENTENCE IF THEY HAD BEEN CONVICTED.

2. THE JUDGMENT ISSUED BY CHIEF JUSTICE ANTHONY GUBBAY HELD THAT SECTION 50(2) OF THE LOMA WAS UNCONSTITUTIONAL, AS IT LIMITED FREEDOM OF EXPRESSION ESPECIALLY THAT OF THE PRESS. THE COURT FOUND THAT SECTION 50 (2) WAS VAGUE AND OPPRESSIVE AND LEFT IT TO THE GOVERNMENT TO REWRITE THE
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SECTION.

3. COMMENT: THIS IS ONLY THE SECOND TIME IN THE POST-INDEPENDENCE ZIMBABWE THAT A SECTION OF THE LOMA HAS BEEN FOUND UNCONSTITUTIONAL. THIS IS A MAJOR VICTORY FOR OPPOSITION PARTIES WHO HAVE BEEN TRYING TO HAVE THE LOMA STRICKEN FROM THE LEGAL BOOKS. HOWEVER, OTHER SECTIONS OF THE LOMA REMAIN IN FORCE AND HAVE RECENTLY BEEN INVOKED BY THE MINISTER OF HOME AFFAIRS, DUMISO DABENGWA, WHO CITED THE ESCALATING POLITICAL VIOLENCE IN FACE OF THE SCHEDULED GENERAL ELECTIONS ON JUNE 24 AND 25. END COMMENT.

MCDONALD#

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